


EX PARTE ORAL PRESENTATION

 **Lampert & O'Connor, P.C.**

1750 K Street NW
Suite 600
Washington, DC 20006

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Tel 202/887-6230
Fax 202/887-6231

Donna N. Lampert
lampert@lola.com

VIA HAND DELIVERY

September 16, 2003

EX PARTE

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

Re: Oral *Ex Parte* Presentation – CC Docket No. 02-33, CS Docket No. 02-52

Dear Ms. Dortch:

On September 15, 2003, Paul Cappuccio, Executive Vice President and General Counsel, and Steven Teplitz, Vice President and Associate General Counsel, both of AOL Time Warner Inc., Henk Brands of Paul Weiss Rifkind Wharton and Garrison LLP, and the undersigned, of Lampert & O'Connor, P.C., on behalf of AOL Time Warner Inc., met separately with the following regarding the above-referenced proceedings: Commissioner Jonathan S. Adelstein, Lisa Zaina, Senior Legal Advisor and Johanna Mikes, Advisor for Media Issues, both of the Office of Commissioner Adelstein; Commissioner Michael J. Copps and Jessica Rosenworcel, Competition and Universal Service Legal Advisor of the Office of Commissioner Copps; and Chairman Michael K. Powell, John Rogovin, General Counsel and Christopher Libertelli, Senior Legal Advisor to Chairman Powell.

Specifically, in the meetings, we stressed that the FCC has properly classified Internet access as an information service, the transmission services of incumbent local exchange carriers ("ILECs") as telecommunications services and cable modem transmission services as telecommunications and urged the FCC to reaffirm these classifications. We explained that the proper goal of the Commission is genuine broadband platform competition and expressed the view that while such competition is likely to emerge in the near to intermediate term, it is not yet here today. We stated that in the interim, the FCC should continue to ensure that the ILECs offer nondiscriminatory access to their transmission services to unaffiliated Internet access and information services providers so as to preserve consumer choice and promote competition. In

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this regard, we asked that the FCC consider instead streamlining ILEC regulation consistent with our previously filed proposal. We explained that only when there is real market evidence of robust platform competition, with numerous consumer options, should the FCC eliminate the obligation that ILECs offer access to their transmission services.

In addition, we explained that there are key differences between the ILECs and cable operators, which fully justify differential regulatory treatment. For decades, the ILECs have been virtually guaranteed an investment return and thus have been able to deploy the majority of today's xDSL infrastructure through regulated rates. By contrast, cable operators have invested more than \$75 billion of their own risk capital investment, with no guarantee of return. Moreover, the success of today's ILEC regulatory framework has been demonstrated, producing robust information services competition, with minimal incremental costs. Internet access and other information services providers have relied heavily upon this framework in investing in their services, bringing broadband and other information services to consumers. On the other hand, no provider has relied upon access to cable transmission services and most importantly, the costs of imposing an entirely new regulatory regime on cable operators, especially for what is likely to be a relatively short period of time until platform competition emerges, far outweigh the benefits such rules would produce during the interim period before more robust competition emerges. Simply put, we urged that the FCC must account for the different evolution of cable and ILEC services as it crafts its broadband framework and thus, while parity of goals may be desirable, the FCC should adapt its rules to achieve the greatest public interest benefits with the least costs.

Pursuant to Section 1.1206(b) of the Commission's rules, four copies of this letter are being provided to you for inclusion in the public record of each of the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Donna N. Lampert
Counsel for AOL Time Warner Inc.

cc Chairman Michael K. Powell
John Rogovin
Christopher Libertelli
Commissioner Jonathan S. Adelstein
Lisa Zana
Johanna Mikes
Commissioner Michael J. Copps
Jessica Rosenworcel